

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Complaint of Randall Ehrlich

Docket No. C2020-1

PRESIDING OFFICER'S RULING ESTABLISHING PROCEDURAL SCHEDULE
AND ADDITIONAL CASE MANAGEMENT PROCEDURES

(Issued April 16, 2020)

I. PROCEDURAL SCHEDULE

Intervention. The deadline to file a notice of intervention pursuant to 39 C.F.R. § 3001.20 (formal intervention) or § 3001.20a (limited participation) is May 1, 2020.

Discovery. Pursuant to Order No. 5455, the Presiding Officer shall conduct limited discovery for the purpose of determining disputed issues of fact in this case.¹

Parties may request that the Presiding Officer obtain specific discovery, but may not independently propound discovery. Order No. 5455 at 8. The parties shall transmit their initial requests that the Presiding Officer obtain specific discovery via e-mail no later than by May 1, 2020 at 7:30 p.m. Eastern Daylight Time (4:30 p.m. Pacific Daylight Time); failure to do so shall result in waiver of the right to request discovery in this case. All discovery shall be completed by no later than 75 days after the Presiding Officer serves the parties' initial discovery requests unless there are pending discovery motions, in which case the discovery deadline shall be tolled pending disposition of said motions. The parties may transmit follow-up requests in this manner by no later than 28

¹ Order Denying Postal Service Motion to Dismiss Complaint and Notice of Limited Formal Proceedings, March 17, 2020, at 8 (Order No. 5455).

days before the discovery cutoff. The parties are urged to initiate discovery promptly, rather than to defer transmitting requests to the end of the period established herein.

For purposes of this case, answers to discovery shall be due within 21 days after the request is served by the Presiding Officer, rather than 14 days as provided by 39 C.F.R. §§ 3001.26(b), .27(b), and .28(b). Those on whom discovery is served are urged to provide answers as soon as practicable. Objections to discovery shall be due within 10 days after the request is served by the Presiding Officer, as provided by 39 C.F.R. §§ 3001.26(c), .27(c), and .28(c). The parties have stipulated to exchanging responsive information via e-mail, unless the responsive information requires transmission by alternative means, such as password protected CD, DVD, or electronic drop box, or non-public information is implicated. If either party seeks non-public treatment for any information, that party's counsel is responsible for conferring with opposing counsel and filing proposed protective conditions at least 5 days before the applicable discovery answer is due.

Prehearing conference. A prehearing conference is scheduled to be conducted before the Presiding Officer on July 20, 2020 at 1:00 p.m. Eastern Daylight Time (10:00 a.m. Pacific Daylight Time) by telephone. Additional prehearing conferences may be scheduled, if necessary.

Presentation of evidence. At the teleconference on April 15, 2020, the Complainant's counsel indicated that he may seek to present direct testimony of his client orally at the hearing, expected to take no longer than half a day via videoconference. The Postal Service's counsel stated their belief that this case can be decided solely based on written evidence. The Presiding Officer acknowledges that the parties' positions on this issue will be better developed through the discovery process. Accordingly, the issue of whether the hearing will involve the presentation of oral versus written testimony (including whether it may be appropriate to supplement written testimony with oral testimony for certain witnesses on particular issues in dispute) will be addressed at the prehearing conference. A request to hold a hearing before the Presiding Officer for the oral presentation of evidence (including any testimony) shall be

filed no later than 7 days before the prehearing conference and shall specify each witness for which oral testimony is proposed.

Hearing. The hearing of evidence in this case shall begin September 1, 2020. To the extent that evidence is presented orally via videoconference, the estimated length of the hearing is no more than 2 days. All dispositive motions, if any, shall be filed as far in advance of the hearing date as practicable.

II. ADDITIONAL CASE MANAGEMENT PROCEDURES

Informal process by which parties may request specific discovery. The parties may transmit requests to the Presiding Officer that specific discovery be obtained via an e-mail message addressed to the Presiding Officer, which must cc opposing counsel and attach the proposed discovery requests as word document(s). For the entire discovery period, each party may transmit no more than 50 proposed interrogatories, 50 proposed requests for the production of documents, and 50 proposed requests for admission in this manner. Each proposed interrogatory, request for the production of documents, and request for admission that is transmitted to the Presiding Officer counts toward the quantitative limitation, regardless of whether the Presiding Officer determines to issue it or not. Each proposed interrogatory, request for the production of documents, and request for admission issued by the Presiding Officer *sua sponte* shall not count towards the quantitative limitation applicable to either party.

Formal process by which parties may request specific discovery. Any request that the Presiding Officer obtain specific discovery not provided herein or otherwise not issued by the Presiding Officer through the informal process shall be made by filing a motion to issue specific discovery. Such motion shall specify how the proposed discovery is reasonably calculated to lead to the discovery of admissible evidence on the outstanding issues of material fact identified by the Commission, attach the proposed discovery requests as word document(s) (or file pdfs on the Commission website and provide a courtesy copy in word format via e-mail to the Presiding Officer

and opposing counsel), and follow the processes applicable to discovery motions set forth herein.

Good faith effort to confer. A good faith effort to confer with opposing counsel requires at least the placing of one telephone call or the forwarding of one e-mail message to opposing counsel.

Discovery motions. To facilitate the expeditious, efficient, and fair resolution of this case, the parties must make a good faith effort to confer with opposing counsel concerning resolution of the disputed matter before filing any motions related to discovery. The Presiding Officer will refuse to entertain a motion to compel discovery, motion for sanctions, motion for protective order, or other discovery motions until this good faith effort has been made. If this good faith effort is unsuccessful, the motion shall (1) state that a good faith effort has been made to resolve the dispute, (2) attach each disputed discovery request, answer, and objection (if applicable), (3) provide available dates and times for a hearing to be conducted by telephone, and (4) concisely state the relief sought, the basis therefor, and the authority relied upon. Any party opposing the motion shall file a response no later than 7 days after the motion is filed (39 C.F.R. § 3001.21(b)). A failure to file a timely response will result in the motion being deemed unopposed. To resolve the dispute, the Presiding Officer may: decide the dispute on the basis of the motion and any response, set a hearing to be conducted by telephone, or order further briefing.

Extension of time or continuance. If either party seeks an extension of time or continuance, counsel must make a good faith effort to confer with opposing counsel to determine a proposed mutually agreeable date before filing a motion. The motion shall be filed before the specified deadline expires and shall state whether or not the moving party is authorized by opposing counsel to represent that the requested extension of time or continuance is unopposed. Continuances or extensions of time shall only be granted for good cause shown.

Waiver or modification. If either party seeks to waive or modify the terms of any Presiding Officer's Ruling, counsel must make a good faith effort to confer with

opposing counsel to determine a proposed mutually agreeable resolution before filing a motion. The Presiding Officer may waive or modify the terms for good cause shown.

Oral argument. If either party requests to present oral argument before the Presiding Officer relating to any motion or brief, "ORAL ARGUMENT REQUESTED" shall appear in the caption/title on page 1 of the applicable motion, response, or brief.

III. RULING

1. The deadline to file a notice of intervention pursuant to 39 C.F.R. § 3001.20 (formal intervention) or § 3001.20a (limited participation) is May 1, 2020.
2. A prehearing conference is scheduled to be conducted before the Presiding Officer on July 20, 2020 at 1:00 p.m. Eastern Daylight Time (10:00 a.m. Pacific Daylight Time) by telephone.
3. The hearing of evidence in this case shall begin September 1, 2020.
4. A request to hold a hearing before the Presiding Officer for the oral presentation of evidence (including any testimony) shall be filed no later than 7 days before the prehearing conference and shall specify each witness for which oral testimony is proposed.
5. The parties and counsel shall follow the procedural schedule and case management procedures established by this Presiding Officer's Ruling.
6. The Secretary shall arrange for publication of the deadline to file a notice of intervention, the date of the prehearing conference, and the date of the hearing in the *Federal Register*.

Lauren A. D'Agostino
Presiding Officer